REMARKS

The finality of the election of species requirement is noted. Applicants confirm the election of claims 1-3 and 7-11, and request that non-elected claims 4-6 be maintained in the application, without further action, for rejoinder or for filing of a divisional application.

Turning to the art rejections, and considering first the rejection of claims 1-3 and 8 and 10, as anticipated by Williams, claim 1 has been amended to more clearly recite and particularly define the subject matter of claim 1, and more specifically to recite, in part:

> a piezoelectric element that is disposed in said casing, and attached at one end to a side wall of said casing by a support member for pivotal movement with respect to the support member about an axis through the support member, and which pizoelectric element bends about said axis when a voltage is applied thereto;

Support is found in the original specification which also describes the basic principles of operation and advantages of the claimed subject matter and embodiments 1-3 thereof, upon which the subject matter of claim 1, as originally filed and as amended reads. The specification notes that:

> One end or both ends of the piezoelectric element in a longitudinal direction may be fixed to an inner surface of the casing directly or through a support member. The support member may be elastic or non-elastic. [¶0009]
>
> ...
>
> ... FIGS. 1A to 1C ... show[] ... piezoelectric acoustic element 1 according to the present embodiment has hollow casing 5 formed with opening 3 in bottom surface 2, piezoelectric element 7 in which one end (fixed end) is fixed to the inner surface of casing 5 through support member 6, and diaphragm 8 extended over opening 3 of casing 5. The other end (free end) of piezoelectric element 7 is joined to diaphragm 8 through vibration transmitting member 9. ... [¶0017]

Piezoelectric element 7 to which a voltage is applied repeats the expansion and contraction motion, the expansion and contraction motion of piezoelectric element 7 is transmitted to diaphragm 8 through vibration transmitting member 9, and diaphragm 8 vibrates upward and downward. More specifically, as shown in FIG. 1 B, piezoelectric

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element 7, to which voltage in the forward or reverse direction is applied, bends upward while being pivoted on the fixed end, and diaphragm 8 is deformed in the same direction. ... [W]hen alternating voltage is applied to piezoelectric element 7, diaphragm 8 deforms (vibrates) upward and downward continuously, and sounds come out. ... [¶0018]

On the contrary, Williams has a piezoelectric element that is sandwiched between the members 3 attached to the housing 1 bottom/rear wall and the ring 6, which is in turn attached to the diaphragm 7. Thus, claim 1 cannot be said to be anticipated by Williams.

Similarly to claim 1, claim 2 has been amended to more clearly recite and particularly define the subject matter of claim 1, and more specifically to recite:

both ends of said piezoelectric element in a longitudinal direction [[~~is~~]]are fixed to an inner surface of a respective side wall of said casing through a respective support member.

In Williams one or both ends of the piezoelectric element are fixed to an inner surface of the casing.(Fig. 8: col 2, lines 17-18). Thus, claim 2 cannot be said to be anticipated by Williams.

Claims 3, 8 and 10 depend from or are linked to claim 1 or claim 2, as the case may be, and are allowable over Williams for the same reasons above adduced relative to claims 1 or 2, as well as for their own additional limitations.

Turning to the rejection of claim 7 as being unpatentable over Williams in view of Sawyer, claim 7 is dependent on claim 1. The deficiencies of Williams vis-à-vis claim 1 are discussed above. It is submitted that Sawyer does not supply the missing teachings to Williams to achieve or render obvious claim 1 or claim 7, which depends thereon.

Even assuming arguendo Sawyer is as the Examiner states, the combination of Williams and Sawyer still would not achieve or render obvious claim 1 or claim 7, which depends thereon.

Turning to the rejection of claims 9 and 11 as being unpatentable over Williams, claim 9 is dependent on claim 1, and claim 11 is linked to claim 1. The deficiencies of Williams vis-à-vis claim 1 are discussed above.

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Claims 9 and 11 are allowable over Williams for the same reasons above adduced relative to claim 1, as well as for their own additional limitations.

New claim 12, which also depends on claim 1, is similarly allowable over the applied art.

Claims 1-3 and 7-11 stand rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-6 of U.S. Patent No. 5,856,956 in view of the prior art of record.

The Examiner has taken the position that:

"While the claim language of the instant application differs from that of the patent, the differences were not found to patentably distinguish the two."

Applicants respectfully disagree that the claims as currently amended are any more subject to a non-statutory obviousness type double patenting rejection. The subject matter of the '956 patent is no closer to the claims as amended than the distinguished prior art of Williams, which has been distinguished as noted above.

Therefore Applicants have respectfully declined to file a terminal disclaimer.

Having dealt with all the rejections made by the Examiner, the Application is believed to be in order for allowance. Early and favorable action is respectfully requested.

In the event there are any fee deficiencies or additional fees are payable, please charge them (or credit any overpayment) to our Deposit Account Number 08-1391.

Respectfully submitted,

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CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this paper is being deposited with the United States Patent Office via the electronic filing procedure on February 9, 2009 at Tucson, Arizona.

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